

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL E. ALESI

Appeal No. 2005-2280
Application No. 09/783,967

ON BRIEF

Before KIMLIN, PAK and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 39-52.

Claim 39 is illustrative:

39. An intravenous device, comprising:

a body having a through passage connecting its one end to its other end, a needle extending from said one end and a flexible tubing connected to said other end for establishing a fluid communication path between said needle and said tubing through said body, whereby with said needle inserted to a patient intravenous infusion to or withdrawal of fluid from said patient may be effected; and

a housing molded to and integrally extending from said one end of said body, said housing being pivotable to a position in substantial alignment along the longitudinal axis of said body so as to envelop said needle.

The examiner relies upon the following references as evidence of obviousness:

Burns	5,643,219	Jul. 1, 1997
Sweeney et al. (Sweeney)	5,746,726	May 5, 1998
Newby et al. (Newby)	6,436,086	Aug. 20, 2002

Appellant's claimed invention is directed to an intravenous device comprising a body having a through passage from which a needle extends from one end and a flexible tubing is connected to the other end for infusion or withdrawal of fluid from a patient. A housing is molded to and integrally extends from the end of the body from which the needle also extends, and the housing is pivotable to a position which envelopes the needle. The housing protects the environment surrounding the needle from contact therewith.

Appealed claims 39-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sweeney in view of Newby and Burns. Claims 39-41, 44-46 and 48-52 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Newby in view of Burns.

Appellant does not separately address the two Final rejections lodged by the examiner. Rather, appellant's arguments are directed to the combined teachings of the three references applied by the examiner. Also, appellant submits that only claims 42 and 51 are separately patentable, as a group. (See page 4 of principal brief.) Accordingly, claims 39-41, 43-50 and 52 stand or fall together.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the Answer, which we incorporate herein, and we add the following primarily for emphasis.

As stated by the examiner, all the applied references, Sweeney, Newby and Burns, are directed to the same field of endeavor as appellant's claimed invention, i.e., using shields to protect the environment surrounding a needle that is used in a patient. Also, all references disclose a body having a passage therein for delivering or withdrawing fluid via the needle. While Sweeney does not have flexible tubing connected to one end

of the body, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to substitute the flexible tubing of Newby for the syringe of Sweeney as an alternate means for blood collection. Appellant does not seem to argue otherwise.

Also, while both Sweeney and Newby disclose a housing connected to the body which shields the needle, neither reference teaches the presently claimed requirement for integrally molding the housing to the body. However, as set forth by the examiner, Burns expressly discloses integrally molding a shield for a needle to a body through which the needle extends via a living hinge 56. Accordingly, we fully concur with the examiner that it would have been a matter of obviousness for one of ordinary skill in the art to modify the devices of Sweeney and Newby such that the shield is integrally molded to the body which accepts the needle. We, like the examiner, find that one of ordinary skill in the art would consider it a design choice to either integrally mold the shield to the body or to separately attach the shield to the body. We agree with the examiner that "[t]he motivation for making the combination would have been to enhance the manufacturing of the device since the advantages of molding are very well known in the art, one of them being simplicity as

provided by Burns" (page 6 of Answer, last sentence). We note that appellant's specification, at page 10, last paragraph, attaches no particular significance, let alone criticality, to casting housing 28 and infusion assembly 2 from the same mold.

We do not understand appellant's argument that Newby "fails to disclose a body that has a through passage" (page 7 of principal brief, first paragraph). Figure 17 of Newby clearly depicts body 90a, or the combination of 90a and 204 as a whole, having a through passage.

Appellant challenges the examiner's finding that Burns discloses a housing that is molded to the body of a device, pointing to Figure 1 of Burns for showing that mounting 48 is a separate component from hub 20. However, the examiner properly cites mounting 48 for meeting the requirement of the claimed body that is integrally molded to the shield 38. Figures 6 and 7 of Burns depict a unitary device when the mounting 48 is attached to vacutainer holder 34. As emphasized by the examiner, the appealed claims do not require that the needle and flexible tubing are integrally molded or connected to the body. While appellant argues that the combination of the three references results in a device that has separate components (page 8 of principal brief, first paragraph), the examiner correctly notes

that the claims on appeal encompass such separate components in addition to the integrally molded ones.

Appellant also contends that "for the Sweeney embodiment upon which the examiner relied upon, the needle extends from the needle hub, not the through passage of the mount" (page 2 of Reply Brief, first paragraph). However, inasmuch as the needle hub is admittedly in the through passage, and the needle is in the needle hub, manifestly, the needle also is in the through passage.

As for separately argued claims 42 and 51, we agree with the examiner's reasoning set forth at page 12 of the Answer, second paragraph, that elements 56 and 58 of Sweeney and 194 and 118 of Newby would have rendered obvious the claimed locking means.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

Appeal No. 2005-2280
Application No. 09/783,967

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

Edward C. Kimlin

EDWARD C. KIMLIN)
Administrative Patent Judge)

Chung K. Pak

CHUNG K. PAK)
Administrative Patent Judge)

) BOARD OF PATENT
APPEALS AND
INTERFERENCES

Peter F. Kratz

PETER F. KRATZ)
Administrative Patent Judge)

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